



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/977,151 | 10/12/2001 | Brian M. Adams | A-70895/RBC/VEJ | 3896 |

52390 7590 01/30/2007
JAMES P. HANRATH
191 NORTH WACKER DRIVE
SUITE 1800
CHICAGO, IL 60606

| |
|----------|
| EXAMINER |
|----------|

HYLTON, ROBIN ANNETTE

| | |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
|----------|--------------|

3781

| SHORTENED STATUTORY PERIOD OF RESPONSE | MAIL DATE | DELIVERY MODE |
|--|------------|---------------|
| 3 MONTHS | 01/30/2007 | PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

09/977,151

Applicant(s) ^{NT}

ADAMS, BRIAN M.

Examiner

Robin A. Hylton

Art Unit

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2006.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 15-37 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-5 and 15-37 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. Claims 27 and 28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the claims are rejected for the following reasons:

The structure of claim 27 contradicts the newly added limitation of claim 1 setting forth the gripping member as being recessed within the spout.

Dependent claims not specifically mentioned are rejected as depending from rejected base claims since they inherently contain the same deficiencies therein.

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1,3,5,26,29, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hicks et al. (US 5,839,627) in view of Murayama (US 4,756,443).

Hicks teaches the claimed fitment including a gripping member being recessed within the spout, but does not expressly disclose a semi-circular member having first and second ends with the second end unconnected to the frangible membrane, which inherently includes a semi-circular member being helical and extending approximately 180° or 270°. Hicks teaches at column 5, lines 4-6 that the member can have other desired shapes including a "tab or handle or any other protrusion suitable for grasping".

Murayama teaches it is known to provide a gripping member as a ring (49) or a semi-circular (35) tab member.

It would have been obvious to one of ordinary skill in the art at the time the invention was

Art Unit: 3781

made to provide the gripping member of Hicks as a semi-circular (claim 1) and helically shaped member (claim 5) having first and second ends with the second end being unconnected to the frangible membrane as taught by Murayama, since such a modification would have involved a mere change in the shape of a component. A change in shape is generally recognized as being within the level of ordinary skill in the art. Doing so provides a gripping member of known alternative configuration.

Regarding claims 5 and 31, it would have been obvious matter of design choice and optimization to one having ordinary skill in the art at the time the invention was made to provide the semi-circular member with an extension approximately 270° and 180°, respectively. Doing so provides a gripping member of sufficient length for gripping without the necessity of forming a ring.

4. Claims 2,24,25, and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above and further in view of Wise et al. (US 3,135,441).

Hicks as modified teaches the claimed fitment except for gripping protrusions on the semi-circular member.

Wise teaches it is known to provide gripping protrusions on a gripping member used to remove a membrane.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of gripping protrusions on the modified gripping member Hicks as taught by Wise. Doing so provides a more secure grasp on the member.

5. Claims 4,27, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of Guglielmini et al. (US 5,301,849).

Hicks as modified teaches the claimed fitment except for a portion of the gripping member extending above the upper end of the spout.

Art Unit: 3781

Guglielmini teaches it is known to provide a portion of the gripping member extending above the upper end of the spout.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a portion of the semi-circular member being above the upper end of the spout. Doing so allows for easier grasping of the gripping member as desired to break the frangible membrane.

6. Claims 32,34,36, and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hicks.

Hicks teaches the claimed fitment including a gripping member (being recessed within the spout), but does not expressly disclose a semi-circular member having first and second ends with the second end being unconnected to the frangible membrane, which inherently includes a semi-circular member being helical and extending approximately 180° or 270°. Hicks teaches at column 5, lines 4-6 that the member can have other desired shapes including a "tab or handle or any other protrusion suitable for grasping".

Murayama teaches it is known to provide a gripping member as a ring (49) or a semi-circular (35) tab member.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the gripping member of Hicks as a semi-circular (claim 32) and helically shaped member (claim 34) having first and second ends with the second end being unconnected to the frangible membrane as taught by Murayama, since such a modification would have involved a mere change in the shape of a component. A change in shape is generally recognized as being within the level of ordinary skill in the art. Doing so provides a gripping member of known alternative configuration.

Art Unit: 3781

Regarding claims 32 and 36, it would have been obvious matter of design choice and optimization to one having ordinary skill in the art at the time the invention was made to provide the semi-circular member with an extension approximately 180° and 270°, respectively. Doing so provides a gripping member of sufficient length for gripping without the necessity of forming a ring.

7. Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 32 above and further in view of Wise.

Hicks as modified teaches the claimed fitment except for gripping protrusions on the semi-circular member.

Wise teaches it is known to provide gripping protrusions on a member used to remove a membrane.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of gripping protrusions on the modified gripping member Hicks as taught by Wise. Doing so provides a more secure grasp on the member.

8. Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 32 above, and further in view of Guglielmini.

Hicks as modified teaches the claimed fitment except for a portion of the gripping member being above the upper end of the spout.

Guglielmini teaches it is known to provide a portion of the gripping member extending above the upper end of the spout.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a portion of the semi-circular member being above the upper end of the spout. Doing so allows for easier grasping of the gripping member as desired to break the frangible membrane.

Art Unit: 3781

Allowable Subject Matter

9. Claims 15-22 are allowed over the prior art of record.

Response to Arguments

10. Applicant's arguments with respect to claims 1-5 and 24-313 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F.R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to

Art Unit: 3781

and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Various prior art disclosures teaching features similar to those disclosed and/or claimed are cited for their disclosures.

14. In order to reduce pendency and avoid potential delays, Group 3720/80 is encouraging FAXing of responses to Office Actions directly into the Group at (571) 273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

15. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. _____ is being facsimiled to The U.S. Patent and Trademark Office via fax number 571-273-8300 on the date shown below:

Typed or printed name of person signing this certificate

Signature_____

Date_____

Art Unit: 3781

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (571) 272-4540. The examiner can normally be reached Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

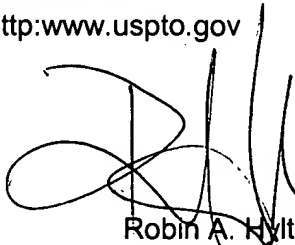
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick, can be reached on (571) 272-4561.

Any inquiry of a general nature or relating to the status of this application or proceeding may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Other helpful telephone numbers are listed for applicant's benefit:

- Allowed Files & Publication (888) 786-0101
- Assignment Branch (800) 972-6382
- Certificates of Correction (703) 305-8309
- Fee Questions (571) 272-6400
- Inventor Assistance Center (800) PTO-9199
- Petitions/special Programs (571) 272-3282
- Information Help line 1-800-786-9199
- Internet PTO-Home Page <http://www.uspto.gov>

RAH
January 21, 2007



Robin A. Hylton
Primary Examiner
GAU 3781